

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN L. VULAKOVICH and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, Pa.

*Docket No. 96-939; Submitted on the Record;
Issued February 19, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden to establish that she is entitled to continuation of pay and compensation benefits from December 24, 1993 to February 18, 1994.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden to establish that she is entitled to continuation of pay and compensation benefits from December 24, 1993 to February 18, 1994.

Appellant submitted a claim for compensation pertaining to an injury sustained on December 23, 1993 which was accepted by the Office of Workers' Compensation Programs for a contusion to the head and cervical strain. Appellant submitted various medical notes and reports dated from December 28, 1993 to March 18, 1994. Progress notes dated December 28, 1993 and January 6, 1994 state that appellant had neck pain and headaches and describe her treatment. In an attending physician's report dated March 3, 1994, appellant's treating physician, Dr. Stephen J. Liederbach, a Board-certified internist, stated that he did not have a record of appellant telling him that she was unable to work. In a report dated February 11, 1994, Dr. Eileen M. Rice, a Board-certified neurologist, psychiatrist and internist, considered appellant's history of injury, performed a physical examination, and found a computerized axial tomography (CAT) scan was normal. She stated that appellant sustained a cervical strain as a result of the December 23, 1993 employment injury which caused chronic contracture headaches as well as exacerbated a preexisting migraine condition. A physical therapist's report dated February 24, 1994 stated that appellant had a significant loss in cervical range of motion and had no neurological findings. In an attending physician's form dated March 2, 1994, Dr. Liederbach stated that appellant never brought up the subject of whether or not she could go to work, and that at the time of his initial evaluation, he had no reason to believe that she could not go back to work. He stated that he discovered retrospectively that appellant was not working.

By decision dated April 7, 1994, the Office denied appellant's claim, stating that the evidence of record failed to establish disability from work causally related to the December 23,

1993 employment injury. Appellant subsequently requested reconsideration of the decision and submitted additional medical evidence. A disability note dated April 21, 1994 from Dr. Liederbach stated that appellant should remain on light duty until May 9, 1994 due to her injury. In a report dated April 27, 1994, the Healthsouth Center form indicated appellant had limitations of motion and could return to work with restriction. In his June 27, 1994 report, Dr. Liederbach stated that appellant reported that following her December 23, 1993 employment injury she experienced daily headaches and was unable to leave home. He noted that Dr. Rice opined that appellant was experiencing muscle contracture headaches as well as exacerbation of a preexisting migraine condition. Dr. Liederbach stated, however, that there was little objective evidence to support a medically disabling injury sustained in the December 23, 1993 employment injury and the exacerbation of the migraine condition "could very well have been disabling." In a note dated July 19, 1994, Dr. Liederbach stated that appellant could return to her full duties except driving as that would unnecessarily serve to risk reinjury to her neck.

By decision dated December 22, 1994, the Office denied appellant's reconsideration request. Appellant requested reconsideration of the decision and submitted additional evidence. In an attending physician's report dated January 4, 1995, Dr. Nancy L. Lavelle, a psychologist, checked the "yes" box indicating that appellant's condition of major depression was related to her employment and stated that appellant was in physical pain daily, was placed on limited duty, and was concerned that her limited-duty status would jeopardize her job. She stated that regardless of how these physical injuries occurred, appellant's constant chronic pain and her fear that the physical restrictions and limited duty would cause her to lose her job contributed to the development of depression symptoms which made performing her duties more difficult.

In a report dated January 24, 1995, Dr. Richard E. Hershey, a Board-certified neurological surgeon and a second opinion physician, considered appellant's personal history, performed a physical examination, and considered Dr. Rice's opinion that the CAT scan and electromyogram (EMG) were normal. He stated that appellant might have sustained a cervical sprain which revealed no significant manifestations other than limited rotation to the right and left which appeared somewhat volitional. Dr. Hershey concluded that he saw no reason for any significant disability in appellant. Progress notes dated February 28, 1995 describes appellant's neck condition and states that her headaches had decreased the past month. A report from Dr. Rice dated February 28, 1994 describes appellant's treatment. In his report dated January 17, 1995, Dr. Liederbach noted appellant's treatment, diagnosed cervical strain with chronic pain most likely due to component of depression and migraine headaches, and stated that there was no further objective evidence of her disability. In his April 25, 1995 report, Dr. Liederbach reiterated his diagnoses, and noted decreased flexion and extension as well as bilateral rotation by approximately 25 percent in all directions and moderate muscle spasm in the posterior cervical spine muscles. He stated that appellant felt an increase in neck pain after pulling some weeds. In an undated attending physician's report, Dr. Jack M. Lynn, a specialist in pain management, diagnosed post-traumatic migraines and musculoskeletal dysfunction, checked the "yes" box that the condition was related to appellant's employment and stated "injured on the job." He stated that appellant was partially disabled and could perform light duty.

By decision dated January 2, 1996, the Office denied appellant's reconsideration request.

An employee is not entitled to continuation of pay unless he or she sustains a traumatic injury and the disability begins within 90 days of the date of injury.¹ Every injury does not necessarily cause disability for employment. Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.² Appellant must present rationalized medical evidence to establish a causal relation between her disabling condition and her employment.³

In the instant case, appellant has failed to present evidence that she has a disabling condition related to her employment. Progress notes dated December 28, 1993, January 6, 1994 and February 28, 1995 and Dr. Rice's February 11 and 28, 1994 reports do not address disability. The February 24, 1994 physical therapist's report stating that appellant had a significant loss in cervical range of motion is not probative because a physical therapist is not a doctor within the meaning of the Act.⁴ In his March 3, 1994 report, Dr. Liederbach stated that he did not have a record of appellant telling him that she was unable to work. In his report dated March 2, 1994, he stated that in his initial evaluation, appellant did not mention the issue of her ability to work and he had no reason to believe that she was unable to work. Dr. Liederbach's April 21, 1994 disability note dated April 21, 1994 stated that appellant should remain on light duty until May 9, 1994 "due to her injury" but does not provide any rationalized opinion how appellant's restrictions are due to the December 23, 1993 employment injury.⁵ Similarly, the April 27, 1994 report from the Healthsouth Center does not explain how appellant's limitation of motion and need for restriction relate to the December 23, 1993 employment injury and therefore it is not probative.

Dr. Liederbach's statement in his June 27, 1994 report that there was little objective evidence to support a medically disabling injury sustained in the December 23, 1993 employment injury supports that appellant was not disabled and his other statement that exacerbation of appellant's migraine headache "could have been disabling" is not probative because it is speculative.⁶ Dr. Lavelle's January 4, 1995 report in which she states appellant's depression is related to her December 23, 1993 employment injury is not probative because depression was not an accepted condition. Dr. Liederbach's July 19, 1994 note that appellant could perform her usual work except for driving supports that appellant was not disabled. Dr. Hershey's report dated January 24, 1995 in which he stated that there were no significant manifestations of a cervical sprain other than limited rotation to the right and left and appellant had no significant disability is well rationalized and establishes that appellant was not disabled. In his January 17, 1995 report, Dr. Liederbach found no further objective evidence of appellant's disability and in his April 25, 1995 report he noted appellant had limitation of motion but did not

¹ 20 C.F.R. § 10.201(a)(2) and (4).

² *Donald Johnson*, 44 ECAB 540, 551 (1993).

³ *Kimper Lee*, 45 ECAB 565, 573 (1994).

⁴ *See Barbara J. Williams*, 40 ECAB 649, 657 (1988).

⁵ *See Debra S. King*, 44 ECAB 203, 210 (1992).

⁶ *See William S. Wright*, 45 ECAB 498, 504 (1994).

specifically address disability. Dr. Lynn's undated report is not probative because he merely checked the "yes" box that appellant's migraines and musculoskeletal dysfunction was work related and stated "injured on the job" without providing a rationalized medical explanation. Therefore the opinion of Dr. Hershey, a second opinion physician, that appellant does not have a significant disability, supported by Dr. Liederbach's opinions that appellant was not disabled based on a lack of any objective evidence, constitutes the weight of the evidence and establishes that appellant was not disabled due to the December 23, 1993 employment injury.

Accordingly, the Office of Workers' Compensation Program's decisions dated January 2, 1996, December 22 and April 7, 1994 are hereby affirmed.

Dated, Washington, D.C.
February 19, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member